

AMENDED IN ASSEMBLY MAY 8, 2013

AMENDED IN ASSEMBLY APRIL 18, 2013

AMENDED IN ASSEMBLY MARCH 21, 2013

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

## ASSEMBLY BILL

**No. 1126**

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**Introduced by Assembly Members Gordon and Mullin  
(Principal coauthor: Assembly Member Wilk)**

February 22, 2013

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An act to amend Sections ~~40106~~, 40116.1, 40121, 40180, 40192, 40194, 40200, 40201, 41700, 41721, 41781, ~~44100, 44101~~, and 50001 of, and to add Sections ~~40171.5 and 44017.5~~ *Section 40150.5* to, the Public Resources Code, relating to solid waste.

### LEGISLATIVE COUNSEL'S DIGEST

AB 1126, as amended, Gordon. Solid waste: biomass conversion: ~~processed~~ municipal solid waste (MSW) conversion.

(1) The California Integrated Waste Management Act of 1989 (act), which is administered by the Department of Resources Recycling and Recovery, requires each city, county, and regional agency, if any, to develop a source reduction and recycling element of an integrated waste management plan. With certain exceptions, the source reduction and recycling element of that plan is required to divert 50% of all solid waste, through source reduction, recycling, and composting activities. Existing law allows the 50% diversion requirement to include, pursuant to specified conditions, not more than 10% through biomass conversion, *which is* defined as the controlled combustion of specific materials for use in producing electricity or heat.

This bill would define the term ~~“processed MSW”~~ *terms “MSW conversion”* and ~~“processed MSW”~~ *“MSW conversion facility,”* and would make conforming changes to existing definitions with regard to those operations and facilities. ~~The bill would also revise the definition of biomass conversion to specify that it includes other thermal conversion of those materials.~~ The bill would also revise the definition of “composting” to include the anaerobic digestion of organic waste.

(2) The act requires the integrated waste management plan required to be adopted by a county to include a countywide siting element that provides a description of the areas to be used for the development of certain facilities. The act excludes certain solid wastes, for purposes of determining the base rate for the diversion of solid waste, and requires that the amount of solid waste diverted include solid waste diverted from a disposal facility or transformation facility.

This bill would require the countywide siting element to include a description of the areas to be used for the development of adequate ~~processed MSW conversion~~, thereby imposing a state-mandated local program by imposing new duties upon local agencies.

This bill would additionally exclude certain used or waste tires or biomass materials from the solid waste calculation used in that base rate determination and would require the amount of solid waste to include solid waste diverted from ~~a processed~~ *an* MSW conversion facility.

~~(3) The act requires enforcement agencies to perform specified functions with regard to solid waste handling and the issuance and enforcement of solid waste facilities permits, including the investigation of the operation of a solid waste facility and, in connection with this investigation, requiring a person to furnish information under penalty of perjury. Existing law imposes specified requirements upon solid waste facilities that convert solid waste into energy.~~

~~This bill would additionally authorize an enforcement agency to investigate a facility that claims to be a biomass conversion facility and to require information regarding that facility, under penalty of perjury, thereby imposing a state-mandated local program by creating a new crime. This bill would require the storage of the materials used in biomass conversion to be regulated as a transfer or processing station.~~

~~(4)~~

(3) Existing law prohibits a person from establishing or expanding a solid waste facility in a county, after a countywide or regional agency integrated waste management plan has been approved, unless the solid

waste facility is, among other things, a disposal facility or a transformation facility that meets certain criteria.

This bill would additionally include, as one of those facilities, ~~a processed~~ *an* MSW conversion facility.

(5)

(4) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act ~~for specified reasons~~ *a specified reason*.

Vote: majority. Appropriation: no. Fiscal committee: yes.

State-mandated local program: yes.

*The people of the State of California do enact as follows:*

1     ~~SECTION 1. Section 40106 of the Public Resources Code is~~  
2     ~~amended to read:~~

3     ~~40106. (a) “Biomass conversion” means the controlled~~  
4     ~~combustion, or other thermal conversion, when separated from~~  
5     ~~other solid waste and used for producing electricity or heat, of the~~  
6     ~~following materials:~~

7     ~~(1) Agricultural crop residues.~~

8     ~~(2) Bark, lawn, yard, and garden clippings.~~

9     ~~(3) Leaves, silvicultural residue, and tree and brush pruning.~~

10    ~~(4) Wood, wood chips, and wood waste.~~

11    ~~(5) Nonrecyclable pulp or nonrecyclable paper materials.~~

12    ~~(b) “Biomass conversion” does not include the controlled~~  
13    ~~combustion of recyclable pulp or recyclable paper materials, or~~  
14    ~~materials that contain sewage sludge, industrial sludge, medical~~  
15    ~~waste, hazardous waste, or either high-level or low-level~~  
16    ~~radioactive waste.~~

17    ~~(c) For purposes of this section, “nonrecyclable pulp or~~  
18    ~~nonrecyclable paper materials” means either of the following, as~~  
19    ~~determined by the department:~~

20    ~~(1) Paper products or fibrous materials that cannot be~~  
21    ~~technically, feasibly, or legally recycled because of the manner in~~  
22    ~~which the product or material has been manufactured, treated,~~  
23    ~~coated, or constructed.~~

~~(2) Paper products or fibrous materials that have become soiled or contaminated and as a result cannot be technically, feasibly, or legally recycled.~~

~~SEC. 2.~~

*SECTION 1.* Section 40116.1 of the Public Resources Code is amended to read:

40116.1. (a) “Composting” means the controlled or uncontrolled biological decomposition of organic wastes.

(b) “Composting” also includes the anaerobic digestion of organic wastes.

~~SEC. 3.~~

*SEC. 2.* Section 40121 of the Public Resources Code is amended to read:

40121. “Disposal facility” or “facility” means a facility or location where disposal of solid waste occurs or a ~~processed~~ *an* MSW conversion facility.

~~SEC. 4.~~ Section 40171.5 is added to the Public Resources Code, to read:

~~40171.5.~~ (a) “Processed municipal solid waste conversion” or “processed MSW conversion” means the conversion of solid waste through a process that meets all of the following requirements:

(1) The waste to be converted is beneficial and effective in that it replaces or supplements the use of fossil fuels or other standard commercial fuels.

(2) The waste to be converted, the resulting ash, and any other products of conversion do not meet the criteria or guidelines for the identification of a hazardous waste adopted by the Department of Toxic Substances Control pursuant to Section 25141 of the Health and Safety Code.

(3) The conversion is efficient and maximizes the net calorific value and burn rate of the waste.

(4) The waste to be processed contains less than 25 percent moisture and less than 10 percent noncombustible waste.

(5) The waste to be processed that is received at the facility is handled in compliance with the requirements for the handling of solid waste imposed pursuant to this division, and no more than a seven-day supply of that waste, based on the throughput capacity of the operation or facility, is stored at the facility at any one time.

(6) No more than 500 tons per day of waste is converted at the facility where the operation takes place.

1     ~~(b) “Processed municipal solid waste conversion facility” or~~  
2     ~~“processed MSW facility” means a facility where processed~~  
3     ~~municipal solid waste conversion that meets the requirements of~~  
4     ~~subdivision (a) takes place.~~

5     SEC. 3. Section 40150.5 is added to the Public Resources Code,  
6     to read:

7     40150.5. (a) “Municipal solid waste conversion” or “MSW  
8     conversion” means the conversion of solid waste through a process  
9     that meets all of the following requirements:

10    (1) The waste to be converted is beneficial and effective in that  
11    it replaces or supplements the use of fossil fuels.

12    (2) The waste to be converted, the resulting ash, and any other  
13    products of conversion do not meet the criteria or guidelines for  
14    the identification of a hazardous waste adopted by the Department  
15    of Toxic Substances Control pursuant to Section 25141 of the  
16    Health and Safety Code.

17    (3) The conversion is efficient and maximizes the net calorific  
18    value and burn rate of the waste.

19    (4) The waste to be processed contains less than 25 percent  
20    moisture and less than 10 percent noncombustible waste.

21    (5) The waste to be processed that is received at the facility is  
22    handled in compliance with the requirements for the handling of  
23    solid waste imposed pursuant to this division, and no more than  
24    a seven-day supply of that waste, based on the throughput capacity  
25    of the operation or facility, is stored at the facility at any one time.

26    (6) No more than 500 tons per day of waste is converted at the  
27    facility where the operation takes place.

28    (b) “Municipal solid waste conversion facility” or “MSW  
29    facility” means a facility where municipal solid waste conversion  
30    that meets the requirements of subdivision (a) takes place.

31    ~~SEC. 5.~~

32    SEC. 4. Section 40180 of the Public Resources Code is  
33    amended to read:

34    40180. “Recycle” or “recycling” means the process of  
35    collecting, sorting, cleansing, treating, and reconstituting materials  
36    that would otherwise become solid waste, and returning them to  
37    the economic mainstream in the form of raw material for new,  
38    reused, or reconstituted products which meet the quality standards  
39    necessary to be used in the marketplace. “Recycling” does not

1 include transformation, as defined in Section 40201 or ~~processed~~  
2 MSW conversion.

3 ~~SEC. 6.~~

4 *SEC. 5.* Section 40192 of the Public Resources Code is  
5 amended to read:

6 40192. (a) Except as provided in subdivisions (b) and (c),  
7 “solid waste disposal,” “disposal,” or “dispose” means the final  
8 deposition of solid wastes onto land, into the atmosphere, or into  
9 the waters of the state.

10 (b) For purposes of Part 2 (commencing with Section 40900),  
11 “solid waste disposal,” “dispose,” or “disposal” means the  
12 management of solid waste through landfill disposal,  
13 transformation, or ~~processed~~ MSW conversion, at a permitted solid  
14 waste facility, unless the term is expressly defined otherwise.

15 (c) For purposes of Chapter 16 (commencing with Section  
16 42800) and Chapter 19 (commencing with Section 42950) of Part  
17 3, Part 4 (commencing with Section 43000), Part 5 (commencing  
18 with Section 45000), Part 6 (commencing with Section 45030),  
19 and Chapter 2 (commencing with Section 47901) of Part 7, “solid  
20 waste disposal,” “dispose,” or “disposal” means the final deposition  
21 of solid wastes onto land.

22 ~~SEC. 7.~~

23 *SEC. 6.* Section 40194 of the Public Resources Code is  
24 amended to read:

25 40194. “Solid waste facility” includes a solid waste transfer  
26 or processing station, a composting facility, a gasification facility,  
27 a transformation facility, a ~~processed~~ *an* MSW conversion facility,  
28 and a disposal facility. For purposes of Part 5 (commencing with  
29 Section 45000), “solid waste facility” additionally includes a solid  
30 waste operation that may be carried out pursuant to an enforcement  
31 agency notification, as provided in regulations adopted by the  
32 department.

33 ~~SEC. 8.~~

34 *SEC. 7.* Section 40200 of the Public Resources Code is  
35 amended to read:

36 40200. (a) “Transfer or processing station” or “station”  
37 includes those facilities utilized to receive solid wastes, temporarily  
38 store, separate, convert, or otherwise process the materials in the  
39 solid wastes, or to transfer the solid wastes directly from smaller

1 to larger vehicles for transport, and those facilities utilized for  
2 transformation.

3 (b) “Transfer or processing station” or “station” does not include  
4 any of the following:

5 (1) A facility, whose principal function is to receive, store,  
6 separate, convert, or otherwise process in accordance with state  
7 minimum standards, manure.

8 (2) A facility, whose principal function is to receive, store,  
9 convert, or otherwise process wastes that have already been  
10 separated for reuse and are not intended for disposal.

11 (3) The operations premises of a duly licensed solid waste  
12 handling operator who receives, stores, transfers, or otherwise  
13 processes wastes as an activity incidental to the conduct of a refuse  
14 collection and disposal business in accordance with regulations  
15 adopted pursuant to Section 43309.

16 (4) ~~A processed~~ *An* MSW conversion facility.

17 ~~SEC. 9.~~

18 *SEC. 8.* Section 40201 of the Public Resources Code is  
19 amended to read:

20 40201. “Transformation” means incineration, pyrolysis,  
21 distillation, or biological conversion other than composting.  
22 “Transformation” does not include composting, gasification,  
23 ~~processed~~ MSW conversion, or biomass conversion.

24 ~~SEC. 10.~~

25 *SEC. 9.* Section 41700 of the Public Resources Code is  
26 amended to read:

27 41700. Each county shall prepare a countywide siting element  
28 that provides a description of the areas to be used for development  
29 of adequate transformation, ~~processed~~ MSW conversion, or  
30 disposal capacity concurrent and consistent with the development  
31 and implementation of the county and city source reduction and  
32 recycling elements adopted pursuant to this part.

33 ~~SEC. 11.~~

34 *SEC. 10.* Section 41721 of the Public Resources Code is  
35 amended to read:

36 41721. (a) The countywide siting element shall be approved  
37 by the county and by a majority of the cities within the county that  
38 contain a majority of the population of the incorporated area of  
39 the county except in those counties that have only two cities, in  
40 which case the element is subject to approval of the city that

1 contains the majority of the population of the incorporated area of  
2 the county. Each city shall act upon the countywide siting element  
3 within 90 days after receipt of the siting element. If a city fails to  
4 act upon the siting element within 90 days after receiving the siting  
5 element, the city shall be deemed to have approved the siting  
6 element as submitted.

7 (b) Notwithstanding subdivision (a), a siting element providing  
8 for a ~~processed~~ *an* MSW conversion facility is only required to be  
9 approved by the city in which it is located, or if the MSW is not  
10 located in a city, by the county.

11 ~~SEC. 12.~~

12 *SEC. 11.* Section 41781 of the Public Resources Code is  
13 amended to read:

14 41781. (a) Except as provided in Sections 41781.1, and  
15 41781.2, for the purpose of determining the base rate of solid waste  
16 from which diversion requirements shall be calculated, “solid  
17 waste” includes only the following:

18 (1) The amount of solid waste generated within a local agency’s  
19 jurisdiction, the types and quantities of which were disposed of at  
20 a permitted disposal facility as of January 1, 1990. Nothing in this  
21 section requires local agencies to perform waste characterization  
22 in addition to the waste characterization requirements established  
23 under Sections 41030, 41031, 41330, 41331, and 41332.

24 (2) The amount of solid waste diverted from a disposal facility,  
25 transformation facility, or ~~processed~~ MSW facility, through source  
26 reduction, recycling, or composting.

27 (b) For the purposes of this section, “solid waste” does not  
28 include any of the following:

29 (1) Solid waste that would not normally be disposed of at a  
30 disposal facility.

31 (2) Used or waste tires, as defined in Article 1 (commencing  
32 with Section 42800) of Chapter 16 of Part 3, or biomass material,  
33 as described in subdivision (a) of Section 40106, which are  
34 converted at a ~~processed~~ *an* MSW conversion facility.

35 (c) For the purposes of this chapter, the amount of solid waste  
36 from which the required reductions are measured shall be the  
37 amount of solid waste existing on January 1, 1990, with future  
38 adjustments for increases or decreases in the quantity of waste  
39 caused only by changes in population or changes in the number



1 or size of governmental, industrial, or commercial operations in  
2 the jurisdiction.

3 ~~SEC. 13. Section 44017.5 is added to the Public Resources~~  
4 ~~Code, to read:~~

5 ~~44017.5. A location where the materials specified in subdivision~~  
6 ~~(a) of Section 40106 are stored for purposes of biomass conversion,~~  
7 ~~prior to conversion, shall be regulated as a transfer or processing~~  
8 ~~station, as defined in Section 40200.~~

9 ~~SEC. 14. Section 44100 of the Public Resources Code is~~  
10 ~~amended to read:~~

11 ~~44100. (a) The enforcement agency, in issuing or reviewing~~  
12 ~~a solid waste facilities permit or in connection with an action~~  
13 ~~relating to a solid waste facilities permit or as otherwise authorized~~  
14 ~~by this division, may investigate the operation of a solid waste~~  
15 ~~facility, a transfer or processing station, a disposal site, collection~~  
16 ~~or handling equipment, a storage area for solid wastes, or a facility~~  
17 ~~that claims to be a biomass conversion facility and storage areas~~  
18 ~~associated with the facility.~~

19 ~~(b) In the investigation, the enforcement agency may require a~~  
20 ~~person who is, or proposes to become, an operator of a solid waste~~  
21 ~~facility, a transfer or processing station, a disposal site, collection~~  
22 ~~or handling equipment, a storage area for solid wastes, or a facility~~  
23 ~~that claims to be a biomass conversion facility and storage areas~~  
24 ~~associated with the facility or a person who the enforcement agency~~  
25 ~~believes may have information concerning a suspected violation~~  
26 ~~of this division, to furnish, under penalty of perjury, any~~  
27 ~~nonprivileged technical or monitoring program or other reports~~  
28 ~~that the enforcement agency may specify.~~

29 ~~(c) If the owner of property upon which solid waste is unlawfully~~  
30 ~~stored, stockpiled, disposed, handled, or maintained refuses to~~  
31 ~~allow or provide the department, the enforcement agency, or a~~  
32 ~~contractor of the department or enforcement agency with access~~  
33 ~~to enter onto the property and perform all necessary cleanup,~~  
34 ~~abatement, or remedial work as authorized pursuant to Section~~  
35 ~~45000 or 48020, the court may issue the department, the~~  
36 ~~enforcement agency, or a contractor of the department or~~  
37 ~~enforcement agency a warrant pursuant to the procedure set forth~~  
38 ~~in Title 13 (commencing with Section 1822.50) of Part 3 of the~~  
39 ~~Code of Civil Procedure to permit reasonable access to the property~~

1 to perform that activity, if both of the following conditions have  
2 been met:

3 (1) ~~An administrative order requiring corrective action has been~~  
4 ~~issued or obtained pursuant to Section 45000 against the property~~  
5 ~~owner.~~

6 (2) ~~The department or enforcement agency finds that there is a~~  
7 ~~significant threat to public health or the environment.~~

8 ~~SEC. 15. Section 44101 of the Public Resources Code is~~  
9 ~~amended to read:~~

10 ~~44101. (a) When conducting an investigation authorized by~~  
11 ~~Section 44100, the enforcement agency may inspect the facility,~~  
12 ~~equipment, or vehicle used for storage, collection, transportation,~~  
13 ~~processing, disposal, or biomass conversion of solid waste, as~~  
14 ~~necessary to ensure compliance with this division and to determine~~  
15 ~~whether the terms and conditions of solid waste facilities permits~~  
16 ~~are being complied with, or if a solid waste facility permit is~~  
17 ~~required for the activity.~~

18 ~~(b) The enforcement agency may impose fees for conducting~~  
19 ~~an inspection pursuant to this section in accordance with Section~~  
20 ~~43212 or 43213.~~

21 ~~(c) The inspection made pursuant to this section shall be made~~  
22 ~~with the consent of the owner or possessor of the solid waste~~  
23 ~~facilities permit or, if consent is refused, with a warrant duly issued~~  
24 ~~pursuant to Title 13 (commencing with Section 1822.50) of Part~~  
25 ~~3 of the Code of Civil Procedure. However, in the event of an~~  
26 ~~emergency affecting the public health or safety, an inspection may~~  
27 ~~be made without the consent of the owner or permitholder or the~~  
28 ~~issuance of a warrant.~~

29 ~~SEC. 16.~~

30 ~~SEC. 12. Section 50001 of the Public Resources Code is~~  
31 ~~amended to read:~~

32 ~~50001. (a) Except as provided by subdivision (b), after a~~  
33 ~~countywide or regional agency integrated waste management plan~~  
34 ~~has been approved by the Department of Resources Recycling and~~  
35 ~~Recovery pursuant to Division 30 (commencing with Section~~  
36 ~~40000), a person shall not establish or expand a solid waste facility,~~  
37 ~~as defined in Section 40194, in the county unless the solid waste~~  
38 ~~facility meets one of the following criteria:~~

39 (1) ~~The solid waste facility is a disposal facility, a transformation~~  
40 ~~facility, or a processed an MSW conversion facility, the location~~

1 of which is identified in the countywide siting element or  
2 amendment to that element, which has been approved pursuant to  
3 Section 41721.

4 (2) The solid waste facility is a facility that is designed to  
5 recover for reuse or recycling at least 5 percent of the total volume  
6 of material received by the facility, and that is identified in the  
7 nondisposal facility element that has been approved pursuant to  
8 Section 41800 or is included in an update to that element.

9 (b) Solid waste facilities other than those specified in paragraphs  
10 (1) and (2) of subdivision (a) shall not be required to comply with  
11 the requirements of this section.

12 (c) The person or agency proposing to establish a solid waste  
13 facility shall prepare and submit a site identification and description  
14 of the proposed facility to the task force established pursuant to  
15 Section 40950. Within 90 days after the site identification and  
16 description is submitted to the task force, the task force shall meet  
17 and comment on the proposed solid waste facility in writing. These  
18 comments shall include, but are not limited to, the relationship  
19 between the proposed solid waste facility and the implementation  
20 schedule requirements of Section 41780 and the regional impact  
21 of the facility. The task force shall transmit these comments to the  
22 person or public agency proposing establishment of the solid waste  
23 facility, to the county, and to all cities within the county. The  
24 comments shall become part of the official record of the proposed  
25 solid waste facility.

26 (d) The review and comment by the local task force shall not  
27 be required for an update to a nondisposal facility element.

28 ~~SEC. 17. No reimbursement is required by this act pursuant to~~  
29 ~~Section 6 of Article XIII B of the California Constitution because~~  
30 ~~a local agency or school district has the authority to levy service~~  
31 ~~charges, fees, or assessments sufficient to pay for the program or~~  
32 ~~level of service mandated by this act or because costs that may be~~  
33 ~~incurred by a local agency or school district will be incurred~~  
34 ~~because this act creates a new crime or infraction, eliminates a~~  
35 ~~crime or infraction, or changes the penalty for a crime or infraction,~~  
36 ~~within the meaning of Section 17556 of the Government Code, or~~  
37 ~~changes the definition of a crime within the meaning of Section 6~~  
38 ~~of Article XIII B of the California Constitution.~~

39 *SEC. 13. No reimbursement is required by this act pursuant*  
40 *to Section 6 of Article XIII B of the California Constitution because*

- 1 *a local agency or school district has the authority to levy service*
- 2 *charges, fees, or assessments sufficient to pay for the program or*
- 3 *level of service mandated by this act, within the meaning of Section*
- 4 *17556 of the Government Code.*

O